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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,190	12/16/2004	Hans Rainer Willmen	P / 37 - 181	5572

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OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK, NY 100368403

EXAMINER

WOODALL, NICHOLAS W

ART UNIT PAPER NUMBER

3733

DATE MAILED: 07/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

28

Office Action Summary	Application No.	Applicant(s)	
	10/518,190	WILLMEN, HANS RAINER	
	Examiner	Art Unit	
	Nicholas Woodall	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,7 and 10 is/are rejected.
- 7) ☒ Claim(s) 3-5,8 and 9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/16/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 12/16/2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Specification

2. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because it is using phrases which can be implied, e.g. "The subject of the invention is". Also, the abstract uses legal phraseology such as "means" and "said". Correction is required. See MPEP § 608.01(b).

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the screw mentioned in claim 10 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

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changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 4 recites the limitation "the longitudinal webs" on the bone dowel. There is insufficient antecedent basis for this limitation in the claim. Examiner recommends making claim 4 dependent on claim 3 to fix the lack of antecedent basis.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 2, 6, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tabor (U.S. 3,710,674) in view of Overaker (U.S. 6,942,666).

Tabor discloses an expandable fastener having a circular cross-section, gently conical on the outside, tapering from the head of the anchor towards the base, and a

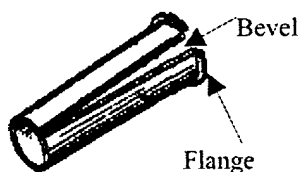
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bore throughout the length of the anchor (claim 1). The anchor also has a longitudinal slit along the length of the anchor (claim 1). The head of the anchor is in the form of a flange and is integrally connected to the anchor (claim 1). The longitudinal slit has a bevel, which decreases in width from the head to the base of the anchor (claims 1 and 7). Tabor fails to teach that the bore has a uniform cross-section throughout the length of the anchor, the head of the anchor has a countersink, that the outer surface of the anchor has annular ribs axially spaced along the entire length of the anchor (claim 1). Tabor also fails to teach that the annular ribs are designed with sharp edges, steep flanks directed towards the head of the anchor, and gentle flanks directed towards the base part of the anchor (claim 2). Tabor also fails to teach that the gentle flanks of the annular ribs have a cone shape and extend as far as the steep flank of the next annular rib (claim 6). Tabor also fails to teach that the anchor may be made of bio-absorbable materials (claim 10). Overaker teaches an anchor comprising a countersink in the head and annular ribs spaced axially along the length of the anchor as shown below in Figure 2 (claim 1). Overaker also teaches that the annular ribs are designed with sharp edges, steep flanks directed toward the head of the anchor, and gentle flanks directed toward the base of the anchor as shown in Figure 2 below (claim 2). Overaker also teaches that the gentle flanks of the annular ribs are conical in shape and extend as far as the steep flank of the next annular rib as shown in Figure 2 below (claim 6). Overaker also teaches that the anchor may be made from an absorbable material such as glass or ceramic (claim 10, column 6 lines 66-67 and column 7 lines 1-32). It would have been obvious to one having ordinary skill in the art at the time of the invention to manufacture

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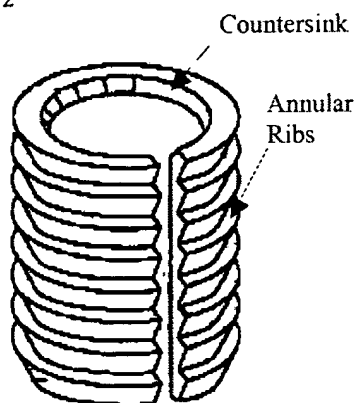
the fastener of Tabor with a head comprising a countersink, annular ribs axially spaced along the length of the anchor comprising sharp edges, steep flanks directed towards the head of the anchor and gentle flanks, which are cone shaped and extend as far as the next annular rib, directed towards the base of the anchor, and that the anchor may be made from a bio-absorbable material in view of Overaker in order to serve as a receiving surface for the insertion of an expander member (column 3 lines 4-11), for engaging the bone tissue within a bone opening (column 3 lines 18-25), and to act as a therapeutic agent release matrix (column 6 lines 62-67, column 7 lines 1-67, and column 8 lines 1-16). With regards to the fastener having a bore of uniform cross-section (claim 1), it is noted that it would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the fastener of Tabor with a uniform bore, since applicant has not disclosed that such solve any stated problem or is anything than one of numerous shapes or configurations a person ordinary with ordinary skill in the art would find obvious the purpose of providing a uniform bore in the fastener. In re Dailey and Eilers, 149 USPQ 47 (1966).

Figure 1



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Figure 2



Allowable Subject Matter

10. Claims 3-5 and 8-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to this application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWW



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER